IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 821 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAGANLAL KADVAJI BHAGORA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 821 of 2001

MS ROOPAL R PATEL for Appellant No.

THROUGH JAIL for Appellant No.

MR KT DAVE, APP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 12/08/2004

ORAL JUDGEMENT

1. Heard ld. counsel Ms. Roopal Patel for the appellant accused and ld. APP Mr. KT Dave for the respondent State.

2. This appeal is preferred by the appellant through jail authorities and ld. counsel Mr. Roopal Patel has been appointed as Amicus Curie by the Court to appear and represent the appellant convict. The appellant has challenged the judgment and order of conviction and sentence dated 24.04.2000 passed by ld. Addl. Sessions Judge, Sabarkantha at Himmatnagar while dealing with Sessions (NDPS) Case No.1/1998. The ld. Addl. Sessions Judge held the appellant accused guilty of the offence punishable under Sec.20(b)(1) of the Narcotic Drugs & Psychotropic Substances Act,1985 (NDPS Act for short).

3. Ld. counsel Ms. Roopal Patel has taken me through the impugned judgment and oral as well as documentary evidence led by the prosecution and it has been elaborately discussed that police officials while on patrolling duty had intercepted the present appellant when he was carrying a gunny bag as his movement was suspicious. The say of the witnesses examined by the prosecution who can be said to be material witnesses, are the police officials, but the version of the prosecution witnesses is corroborated by other facts and circumstances of the case because it is on record that when the appellant was intercepted, he was offered an opportunity to get himself searched in presence of a responsible officer or a Magistrate. Muddamal Ganja has been recovered from the gunny bag (thela) which was found in the hands of the appellant accused and undisputedly, Mamlatdar was present when muddamal was taken out of the bag who had directed panchas to get smell of the leaves which were found and taken out and the panchas along with intercepting police officer has opined that leaves are of Ganja. Report of Forensic Science Laboratory also corroborates this version. It is categorically stated by the Mamlatdar- a responsible Gazetted Officer that initially, entire gunny bag was weighed and weight thereof was found 4 Kg. Thereafter, after taking out yellow and sky-blue bags which were inside the gunny bag, again gunny bag was weighed and weight thereof was found 1.270 Kg. Thereafter, yellow bag containing Ganja and sky-blug bag were weighed and the weight was found 1.435 kg. Weight of leaves etc. of sky-blue bag was found 1.400 kg. Ultimately, it was found that Ganja including the leaves and other things was weighing 1.275 kg. Therer is no serious dispute as to the identity of muddamal recovered inlcuding the bags. This exercise was conducted in presence of panchas. Of course, there is some confusion as to the colour of the bag found as narrated by the witnesses, but the fact remains that muddamal Ganja was recovered in presence of Panchas and

the Mamlatdar. Though both the panchas have not supported the case, but by written Yadi, Mamlatdar was requested to come and he was present when recording-cum-search panchanama was drawn. Ld. trial Judge has rightly held that there is no reason to disbelieve P.W.5 Police Head Constable Ramjibhai Hirabhai and P.W.6 Police Constable Badaridan Joravardan when their version has been substantiated by the deposition of the Mamlatdar. It is relevant tonote that muddamal was sealed with a slip signed by Mamlatdar who has no interest otherwise in the result of the prosecution. So, conclusions recorded by ld. Judge hold the appellant accused guilty, are in no way erroneous or otherwise illegal. It is not a matter of dispute that when Police Constable Jagatsingh Chhatrasingh intercepted the appellant accused, he was in a public place (i.e. near Idar Town Bus Stand) and was searched in a public place and, therefore, ld. trial Judge has held that he was caught red-handed. Say of P.W.2 Mohanlal is also rightly appreciated.

4. The decisions that were brought before the ld. trial Judge by the defence counsel have been rightly appreciated and when there was nothing on record to show that police personnel had any animosity with the accused at the relevant point of time, they had no reasons to implicate the present appellant accused in such a serious offence. one aspect also should not miss the mind that planting of huge quantity of Ganja which is of more than 1 kg. can not be forcibly made and the same can not be forcibly planted and that too on the body a person. Appellant accused was not the resident of the town where he was intercepted and he was not able to even explain properly as to why and how he was there on the spot of incident where he was intercepted.

4. For short, accepting the say of the ld. APP Mr.Dave and adopting the reasons assigned by ld. Addl. Sessions Judge, this Court is of the view that there is no merits in this Criminal Appeal. Hence, present Criminal Appeal is hereby dismissed. Impugned judgment and order of conviction and sentence passed by ld. Addl. Sessions Judge. is hereby confirmed.

[C.K. BUCH, J]

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